

The Honorable Tana Lin

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

REPLENIUM INC.,

Plaintiff,

v.

ALBERTSONS COMPANIES, INC.,

Defendant.

CASE NO. 2:24-cv-1281-TL

STIPULATED PROTECTIVE ORDER

NOTE ON MOTION CALENDAR:
October 9, 2024

1. PURPOSES AND LIMITATIONS

Defendant Albertsons Companies, Inc. (Albertsons) intends to file a motion to dismiss Plaintiff Replenium, Inc.'s (Replenium) complaint. In connection with that motion and corresponding pleadings, the parties will likely discuss and/or file information that at least one party believes to be confidential, proprietary, or private for which special protection may be warranted. Accordingly, for purposes of the motion to dismiss stage, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order.¹ By entering this Stipulated Protective Order, Albertsons does not waive any challenge or admit any fact as to

¹ The parties expressly intend to file an Amended Stipulated Protective Order if this matter proceeds past the motion to dismiss stage. The Amended Stipulated Protective Order will better address topics such as the scope of alleged confidential information, party representatives who can view the confidential information, and the necessity for different levels of confidentiality (including an Attorney's Eyes Only provision).

whether information sought to be sealed by Replenium constitutes protectable confidential information or a trade secret. By entering this Stipulated Protective Order, Replenium does not waive its right to object to the introduction of documents outside of the complaint for purposes of deciding a motion to dismiss, and, rather, expressly reserves such rights. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. “CONFIDENTIAL” MATERIAL

“Confidential” material shall include the following documents and tangible things produced or otherwise exchanged: emails, documents, presentations, and other materials that contain information that either Albertsons or Replenium alleges constitutes a trade secret and/or confidential information relating to the parties’ discussions and work on the automated replenishment service for Albertsons.

3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material.

However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4.1 Basic Principles. A receiving party may use confidential material that is disclosed or produced by another party or by a non-party, or that is already in the receiving party’s possession, in connection with this case only for prosecuting, defending, or attempting to settle

1 this litigation. Confidential material may be disclosed only to the categories of persons and under
2 the conditions described in this agreement. Confidential material must be stored and maintained
3 by a receiving party at a location and in a secure manner that ensures that access is limited to the
4 persons authorized under this agreement.

5 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
6 by the court or permitted in writing by the designating party, a receiving party may disclose any
7 confidential material only to:

8 (a) the receiving party’s counsel of record in this action, as well as employees
9 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

10 (b) the officers, directors, and employees (including in house counsel) of the
11 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
12 agree that a particular document or material produced is for Attorney’s Eyes Only and is so
13 designated;

14 (c) experts and consultants to whom disclosure is reasonably necessary for this
15 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

16 (d) the court, court personnel, and court reporters and their staff;

17 (e) copy or imaging services retained by counsel to assist in the duplication of
18 confidential material, provided that counsel for the party retaining the copy or imaging service
19 instructs the service not to disclose any confidential material to third parties and to immediately
20 return all originals and copies of any confidential material;

21 (f) during their depositions, witnesses in the action to whom disclosure is
22 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
23 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
24 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
25 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
26 under this agreement;

1 (g) the author or recipient of a document containing the information or a
2 custodian or other person who otherwise possessed or knew the information.

3 4.3 Filing Confidential Material. Before filing confidential material or discussing or
4 referencing such material in court filings, the filing party shall confer with the designating party,
5 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
6 remove the confidential designation, whether the document can be redacted, or whether a motion
7 to seal or stipulation and proposed order is warranted. During the meet and confer process, the
8 designating party must identify the basis for sealing the specific confidential information at issue,
9 and the filing party shall include this basis in its motion to seal, along with any objection to sealing
10 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and
11 the standards that will be applied when a party seeks permission from the court to file material
12 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the
13 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.
14 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with
15 the strong presumption of public access to the Court's files.

16 5. DESIGNATING PROTECTED MATERIAL

17 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
18 or non-party that designates information or items for protection under this agreement must take
19 care to limit any such designation to specific material that qualifies under the appropriate
20 standards. The designating party must designate for protection only those parts of material,
21 documents, items, or oral or written communications that qualify, so that other portions of the
22 material, documents, items, or communications for which protection is not warranted are not swept
23 unjustifiably within the ambit of this agreement.

24 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
25 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
26 unnecessarily encumber or delay the case development process or to impose unnecessary expenses

1 and burdens on other parties) expose the designating party to sanctions.

2 If it comes to a designating party's attention that information or items that it designated for
3 protection do not qualify for protection, the designating party must promptly notify all other parties
4 that it is withdrawing the mistaken designation.

5 5.2 Manner and Timing of Designations. Except as otherwise provided in this
6 agreement (see, *e.g.*, second paragraph of section 5.2(b) below), or as otherwise stipulated or
7 ordered, disclosure or discovery material that qualifies for protection under this agreement must
8 be clearly so designated before or when the material is disclosed or produced.

9 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
10 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
11 the designating party must affix (or, in the case of material already in the receiving party's
12 possession, direct the receiving party to affix) the word "CONFIDENTIAL" to each page that
13 contains confidential material. If only a portion or portions of the material on a page qualifies for
14 protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by making
15 appropriate markings in the margins).

16 (b) Testimony given in deposition or in other pretrial proceedings: the parties
17 and any participating non-parties must identify on the record, during the deposition or other pretrial
18 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
19 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the
20 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or
21 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information
22 at trial, the issue should be addressed during the pre-trial conference.

23 (c) Other tangible items: the producing party must affix (or, in the case of
24 material already in the receiving party's possession, direct the receiving party to affix) in a
25 prominent place on the exterior of the container or containers in which the information or item is
26 stored the word "CONFIDENTIAL." If only a portion or portions of the information or item

1 warrant protection, the producing party, to the extent practicable, shall identify the protected
2 portion(s).

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
4 designate qualified information or items does not, standing alone, waive the designating party's
5 right to secure protection under this agreement for such material. Upon timely correction of a
6 designation, the receiving party must make reasonable efforts to ensure that the material is treated
7 in accordance with the provisions of this agreement.

8 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

9 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
10 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
11 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
12 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
13 challenge a confidentiality designation by electing not to mount a challenge promptly after the
14 original designation is disclosed.

15 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
16 regarding confidential designations without court involvement. Any motion regarding confidential
17 designations or for a protective order must include a certification, in the motion or in a declaration
18 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
19 affected parties in an effort to resolve the dispute without court action. The certification must list
20 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
21 to-face meeting or a telephone conference.

22 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
23 intervention, the designating party may file and serve a motion to retain confidentiality under Local
24 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
25 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
26 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on

1 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain
2 the material in question as confidential until the court rules on the challenge.

3 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
4 LITIGATION

5 If a party is served with a subpoena or a court order issued in other litigation that compels
6 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party
7 must:

8 (a) promptly notify the designating party in writing and include a copy of the
9 subpoena or court order;

10 (b) promptly notify in writing the party who caused the subpoena or order to
11 issue in the other litigation that some or all of the material covered by the subpoena or order is
12 subject to this agreement. Such notification shall include a copy of this agreement; and

13 (c) cooperate with respect to all reasonable procedures sought to be pursued by
14 the designating party whose confidential material may be affected.

15 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

16 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
17 material to any person or in any circumstance not authorized under this agreement, the receiving
18 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
19 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
20 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
21 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be
22 Bound” that is attached hereto as Exhibit A.

23 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
24 MATERIAL

25 When a producing party gives notice to receiving parties that certain inadvertently
26 produced material is subject to a claim of privilege or other protection, the obligations of the

1 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
2 is not intended to modify whatever procedure may be established in an e-discovery order or
3 agreement that provides for production without prior privilege review. The parties agree to the
4 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

5 10. NON TERMINATION AND RETURN OF DOCUMENTS

6 Within 60 days after the termination of this action, including all appeals, each receiving
7 party must return all confidential material to the producing party, including all copies, extracts and
8 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

9 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
10 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
11 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
12 product, even if such materials contain confidential material.

13 The confidentiality obligations imposed by this agreement shall remain in effect until a
14 designating party agrees otherwise in writing or a court orders otherwise.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: 10/9/2024 _____ /s/ Aaron Schaer
3 Attorneys for Plaintiff

4 DATED: 10/9/2024 _____ s/ Lawrence C. Locker
5 Attorneys for Defendant

6
7 PURSUANT TO STIPULATION, IT IS SO ORDERED

8 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
9 documents, electronically stored information (ESI) or information, whether inadvertent or
10 otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or
11 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
12 documents, including the attorney-client privilege, attorney work-product protection, or any other
13 privilege or protection recognized by law. This Order shall be interpreted to provide the maximum
14 protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply.
15 Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review
16 of documents, ESI or information (including metadata) for relevance, responsiveness and/or
17 segregation of privileged and/or protected information before production. Information produced
18 in discovery that is protected as privileged or work product shall be immediately returned to the
19 producing party.

20
21 DATED: October 10, 2024


22
23 
24 _____
25 Tana Lin
26 United States District Judge

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Western District of Washington on October __,
2024 in the case of *Replenum Inc. v. Albertsons Companies, Inc.*, No. 2:24-CV-1281 TL. I agree
to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand
and acknowledge that failure to so comply could expose me to sanctions and punishment in the
nature of contempt. I solemnly promise that I will not disclose in any manner any information or
item that is subject to this Stipulated Protective Order to any person or entity except in strict
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____